

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

UNITED STATES OF AMERICA,

Plaintiff,

v.

Criminal No. 05-1849 JH

DAKOTA FITZNER,

Defendant.

**EMERGENCY UNOPPOSED MOTION TO EXTEND TIME FOR DEFENDANT
DAKOTA FITZNER TO VOLUNTARILY SURRENDER AT DESIGNATED
BUREAU OF PRISONS FACILITY**

The Defendant, DAKOTA FITZNER, by and through his attorney, Todd Hotchkiss of Frechette & Associates, P.C., hereby moves this Court, without opposition, to extend the time for him to voluntarily surrender at a designated Bureau of Prisons (BOP) facility to 2:00 p.m. on May 18, 2011.

As grounds, defense counsel states as follows:

1. Mr. Fitzner's judgment stated, "The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons ... as notified by the United States Marshal."

2. Mr. Fitzner is presently ordered to voluntarily surrender at a designated BOP facility by 2:00 p.m. on Wednesday, April 20, 2011.

3. On the afternoon of April 18, 2011, undersigned counsel

received a telephone call from Nancy Lucero of the United States Marshal's Office in Las Cruces, New Mexico informing counsel that the BOP has yet to designate a facility at which Mr. Fitzner should surrender himself.

4. Ms. Lucero's understanding of why the BOP has yet to designate Mr. Fitzner is that Mr. Fitzner's presentence report indicated he had had some surgeries in recent years and the BOP is presently evaluating Mr. Fitzner's medical needs and consequently which facility to designate for Mr. Fitzner.

5. Ms. Lucero told undersigned counsel that she had called and left a voice message for United States Probation/Pretrial Services Officer Sandra Day, who is supervising Mr. Fitzner, explaining the circumstances.

6. Ms. Lucero told undersigned counsel that Mr. Fitzner has been calling Ms. Lucero daily for approximately two weeks to attempt to learn where he is to voluntarily surrender himself.

7. Ms. Lucero suggested that Mr. Fitzner have the date for him to voluntarily surrender himself extended to 2:00 p.m. on Wednesday, May 18, 2011.

8. Counsel then called Ms. Day, who told undersigned counsel that she had listened to Ms. Lucero's message and that Ms. Day does not oppose an extension of time for Mr. Fitzner to voluntarily surrender himself at a designated BOP facility to 2:00 p.m. on May 18, 2011.

9. On April 18, 2011, counsel attempted to contact opposing counsel of record Assistant United States Attorney James R.W. Braun. Mr. Braun was out of the office on April 18, 2011. Undersigned counsel then spoke with Ms. Paula G. Burnett, the head of the Criminal Division at the United States Attorney's Office and explained the circumstances as set forth herein. Ms. Burnett, on Mr. Braun's behalf, did not oppose this motion.

10. On April 18, 2011, counsel contacted U.S. Pretrial Services Officer Sandra Day, who does not oppose this motion.

WHEREFORE, the Defendant, DAKOTA FITZNER, respectfully requests this Court to enter an order extending the time for him to voluntarily surrender at a designated Bureau of Prisons facility to 2:00 p.m. on May 18, 2011. Mr. Fitzner also requests such other and further relief as this Court may deem just and proper.

Respectfully submitted,

/s/ Todd Hotchkiss
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CERTIFICATE OF SERVICE

I, Todd Hotchkiss, hereby certify that on April 18, 2011 I electronically filed the foregoing document through the CM/ECF system and that through that system opposing counsel James Braun, Assistant United States Attorney, will be served with a true and accurate copy.

/S/ Todd Hotchkiss
TODD HOTCHKISS